CIMB BANK BHD v. AMBANK (M) BHD & ORS

HIGH COURT MALAYA, SHAH ALAM
PRASAD SANDOSHAM ABRAHAM J
[SUIT NO: 22NCVC-552-05-2012]
4 AUGUST 2014

LAND LAW: *Indefeasibility of title and interests – Charge – Discharge of charge – Forgery – Sale of property – Registration of charge in favour of first defendant – Transfer of interest from plaintiff to first defendant – Whether subject to immediate indefeasibility – Whether s. 278 National Land Code complied – Whether registration set aside – Whether issue document of title contained forged signatures – Whether land office negligent and in breach of duty – Whether first defendant suffered losses – National Land Code, s. 340 – Tan Ying Hong v. Tan Sian San & Ors*

Ching Ting Seng and Ching Chong Lup ('the Chings') were the original registered owners of a land situated in Klang ('the property'). *Vide* a loan agreement dated 17 March 2006, Southern Bank Bhd ('SBB'), now known as the plaintiff, granted banking facilities to the Chings and a charge over the property was registered in favour of SBB. The facts revealed that one Wong Chee Kong ('Wong') purchased the property from the Chings and applied for a property financing loan from the first defendant. The purpose of the said loan was to finance the purchase of the property. Upon submission of the security documents, the land office effected the discharge of CIMB's charge, registered Wong as the legal proprietor of the property and issued a new issue document of title ('IDT'). As a result, the first defendant was registered as the chargee of the property. Disputes arose when the plaintiff contended that the registration of the charge in favour of the first defendant had to be set aside since, *inter alia*, the discharge of charge purportedly signed by the plaintiff had been forged. The first defendant, however, argued that the property was purchased in good faith and for valuable consideration. As such, it was asserted that the concept of deferred indefeasibility would apply. The first defendant also counter claimed against the Pentadbir Tanah Daerah Klang ('second defendant') and the Pengarah Tanah dan Galian Selangor ('third defendant') for breach of duty. It was argued that the signature on the IDT was not made by the authorised signatories of the land office and this fact had been overlooked by the officers at the land office. On the contrary, the second and third defendants relied on the protection under s. 22 of the National Land Code ('NLC'). The issues that arose for consideration were (i) whether the registration of the charge in favour of the first defendant should be set aside; (ii) whether the relationship between the plaintiff and the first defendant was that of an immediate purchaser; (iii) whether the second and third defendants had exercised their functions perfunctorily; (iv) whether the second and third defendants were negligent in allowing the IDT to be registered along with

A the security documents in favour of the first defendant; and (v) whether the first defendant had suffered losses.

Held (allowing plaintiff's claim and first defendant's counter claim):

(1) Any charge for the time being registered shall, subject to the provision
B under s. 340 of the NLC, be indefeasible. However, s. 340(2)(b) read together with the proviso to s. 340(3) affords protection to a subsequent purchaser. On the facts, in order for the charge to be created in favour of the first defendant, a discharge of the charge in favour of the plaintiff had to be executed pursuant to s. 278 of the NLC. Since there was
C forgery, the role of the first defendant as a subsequent purchaser for valuable consideration, *ie*, a chargee, was that of an immediate purchaser and subject to immediate indefeasibility. (paras 8 & 11)

(2) The plaintiff did not intend to relinquish its interest by way of a charge over the property. In the circumstances, s. 278 of the NLC had not
D been complied with and the first defendant's charge would be subject to that of the plaintiff and defeasible. Therefore, the registration of the charge in favour of the first defendant was set aside. (paras 8 & 9)

(3) In this case, the registered owner (purchaser) created a charge over the said property by forging the signature of the attorney of the plaintiff
E and registered the same as a discharge of charge to enable the current charge over the said property in favour of the first defendant to be registered. As such, the purported transfer of interest from the plaintiff to the first defendant was one of immediate indefeasibility and the proviso to s. 340(3) of the NLC did not apply. Further, *vide*
F s. 340(2)(b), the interest of the first defendant would not be indefeasible and was liable to be set aside (*Tan Yin Hong v. Tan Sian San & Ors;* refd). (para 14)

(4) Sections 297 to 302 of the NLC supported the proposition that the second and third defendants should not exercise their functions
G perfunctorily, *ie*, with minimum care but the law imposed a duty on them to exercise due care to ensure the integrity of documents presented and issued from their registry. On the facts, the officers of the land office had overlooked the unauthorised signature on the IDT. Further, there was lack of veracity in relation to the said IDT issued by
H the second and third defendants. As such, the second and third defendants had been negligent in allowing the IDT to be registered along with the security documents in favour of the first defendant which resulted in the latter suffering losses. (paras 17, 20, 22 & 23)

Case(s) referred to:

I *Kamarulzaman Omar & Ors v. Yakub Husin & Ors [2014] 1 CLJ 987 FC* ***(refd)***
Ministry of Housing & Local Government v. Sharp & [1970] 2 QB 223 ***(refd)***
Pendaftar Dan Pemeriksa Kereta Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd [2000] 2 CLJ 573 CA ***(refd)***

Poh Yang Hong v. Ng Lai Yin & Ors [2013] 8 CLJ 964 HC ***(refd)***
Pow Hing & Anor v. Registrar of Titles, Malacca [1980] 1 LNS 120 FC ***(refd)***
Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269 FC ***(refd)***
Yap Ham Seow v. Fatimawati Ismail & Ors And Another Appeal [2013] 9 CLJ 577 CA ***(refd)***

Legislation referred to:
Federal Constitution, art. 13
National Land Code, ss. 22, 278, 297, 298, 299, 300, 301, 302, 340(2)(b), (3)

For the plaintiff - Karen Wilfred; M/s Wilfred Dhyan & Co
For the 1st defendant - Koh San Tee; M/s Benjamin Dawson & Koh San Tee
For the 2nd & 3rd defendants - Nik Haizie Azlin; State Legal Advisor, Selangor

Reported by Kumitha Abd Majid

JUDGMENT

Prasad Sandosham Abraham J:

[1] This case is another in a series of cases that have troubled the courts where a resourceful third party akin to the Dickensian character, "the Artful Dodger" causes competing financial institutions to suffer loss by issue of continuation of a new issue document of Title with forged documents thus causing loans to be released based on security on the same piece of land causing one of the financial institutions to lose out. The action will also have ramifications for the appropriate land office in that invariably both financial institutions would have a counterclaim against them.

[2] In dealing with such problems, which are on the increase, s. 340 of the National Land Code (NLC) has been put under a microscope in terms of analysis of its effects. The Courts have gone through a roller coaster journey with regards to the state of the law in connection with the principles of immediate and deferred defeasibility, but with the advent of the decision of the Federal Court in *Tan Ying Hong v. Tan Sian Son & Ors* reported in [2010] 2 CLJ p. 269, a watershed decision in this area of the law, a case which I will revisit later in my judgment the law appears to be settled. I now turn to the material facts of the case, which I now set out.

[3] When the facts of this case are unfolded, it will be seen in the final analysis that both CIMB and AmBank were defrauded by a third party. This much was acknowledged by Ms. Chee Bee Kim ("PW2"), a witness for the plaintiff at the trial (see p. 12 of the Notes of Evidence). This neatly sums up the parameters of the dispute between the parties herein.

[4] The material facts that form the background of this dispute may be shortly stated as follows:

(i) The land in dispute is held under GM7794 Lot 23223 Seksyen 21 Mukim Bandar Klang, District of Klang, State of Negeri Selangor Darul Ehsan (the said property).

A (ii) By a loan agreement dated 17 March 2006, Southern Bank Berhad ("SBB") now known as the plaintiff granted banking facilities to one Ching Ting Seng and Ching Chong Lup ("the Chings"). The Chings executed a charge in favour of SBB over over the property. The charge was registered on 23 March 2006.

B (iii) On 6 September 2006, the banking business of SBB was vested unto CIMB.

(vi) On 14 November 2008, one Wong (Wong) applied for a property financing loan from AmBank. The loan was to finance the purchase of the property. (see pp. 28-33 of Bundle B1 exh. D1(a). The property C would stand as a security for the loan ("the AmBank charge").

(v) AmBank appointed Messrs KK Lim & Associates ("KKL") as their solicitors for the financing transaction. Their duties, *inter alia*, entails the preparation of the security documents, namely the creation of a D charge over the property in favour of AmBank. KKL conducted the relevant land searches, made the appropriate enquiries, and also obtained all the necessary undertakings and confirmations from the solicitors acting in the sale and purchase agreement between the Chins and Wong. The firm of solicitors concerned was Messrs Ku Abdul Rahman & Associates ("the SPA solicitors") E

(vi) By a letter dated 11 February 2009 (see pp. 65-66 of Bundle B1 exh. D21), the SPA solicitors informed KKL of the following:

(a) The differential sum between the balance purchase price and the loan sum had been settled by Wong; F

(b) The Vendors ie the Chings, had settled the outstanding loan due to CIMB and they were awaiting the original title deed and duly executed discharge of charge to be released by CIMB;

(c) The SPA solicitors undertook to forward to KKL the duly G adjudicated and stamped memorandum of transfer ("the MOT") together with the original title deed and the discharge of charge;

(vii) On 10 March 2009 (see p. 75 of bundle B1 exh. D26) KKL received from the SPA solicitors:

H (a) The original title deed to the property ("IDT Version 6") (see pp. 76-78 of bundle B1 exh. D26);

(b) The duly stamped MOT (see pp. 80-83 of bundle B1 exh. D26)

(c) The discharge of charge of the CIMB Charge ("the discharge of CIMB's charge") (see pp. 166-168 of bundle B1 exh. D26). I

(viii) On 17 March 2009, KKL received from the SPA solicitors, the duplicate of the CIMB Charge (see pp. 147-165 of bundle B1 exh. D32) forwarded under a letter dated 16 March 2009 (see pp. 146-165

of bundle B1 exh. D30). On 19 March 2009, KKL presented, *inter alia*, the discharge of the CIMB's Charge, the MOT the AmBank Charge together with the IDT Version 6 at the land office (collectively to be referred as "the security documents") (See p. 227 of Bundle B1).

(ix) On 7 April 2009, KKL, on behalf of AmBank, forwarded a cashier's Order No. 724209 for RM1,910,000 (see p. 177 of bundle B1 exh. D8) being the balance purchase price ("the balance purchase price") to the SPA solicitors (see p. 178 of bundle B1 exhibit D8).

(x) On 7 April 2009, the SPA Solicitors credited the balance purchase price into their account maintained with Al-Rajhi Bank (see encl. 44 exh. B transaction date: 7 April 2009).

(xi) On 17 September 2009, KKL made enquiries at the land office for the extraction of the security documents. They were then informed by the land office that the security documents were rejected due to a letter dated 30 March 2009 from the SPA Solicitors. This was the first time KKL knew of the rejection.

(xii) The security documents were presented at the land office on 25 November 2009 (see pp. 246-247 of bundle B). Following this, the land office *inter alia*:

(a) Effected the discharge of CIMB's charge;

(b) Registered Wong as the legal proprietor of the property and issued a new IDT ("the IDT Version 3");

(c) Thereupon, AmBank was registered as the chargee of the property;

[5] Before I delve into the arguments of law and evaluation of the evidence in this case, I am reminded of the approach that the Federal Court exhorts this court to take in cases of such a nature. I refer to the *dictum* of His Lordship Jeffery Tan FCJ in the case of *Kamarulzaman Omar & Ors v. Yakub Husin & Ors* reported in [2014] 1 CLJ 987. NB p. 1025 of the report at para. 41 and I quote:

> [41] Before we adjourn, we would summarise the foregoing and pass on the following, as a guide to trial courts. Whenever a registered title or interest is sought to be set aside under s. 340, first ascertain whether the title or interest under challenge is registered in the name of an immediate purchaser or a subsequent purchaser. If the title or interest is registered in the name of an immediate purchaser, the *bona fides* of the immediate purchaser will not offer a shield of indefeasibility. The title or interest of an immediate purchaser is still liable to be set aside if any of the vitiating elements as set out in s. 340(2) has been made out. If the title or interest is registered in the name of a subsequent purchaser, then the vitiating elements in s. 340(2) would not affect the title or interest of a *bona fide* subsequent purchaser. The title or interest of a subsequent

purchaser is only liable to be set aside if the subsequent purchaser is not a *bona fide* subsequent purchaser. The title or interest acquired by a subsequent purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a subsequent purchaser, is indefeasible.

[6] The original search on Borang 5DK (p. 76 of B1) shows the original registered owners of the said property were Chin Chong Lup, IC No. 840306-14-1513 and Chin Ting IC No. 500418-10-5183 (the vendors) and the original chargee was the plaintiff. The continuation of title Borang 5DK confirms Wong Chee Kong IC No. 770808-05-5663 (purchaser) as the registered owner and the first defendant as the registered chargee (bundle B pp. 121 to 123) which shows the transaction of sale & purchase between the original vendors and the purchaser. It is clear from the facts, that the purchaser and the first defendant are on the title as the registered owner and registered chargee of the said land.

[7] I now set out *in toto* s. 340 of the NLC (Act 1956/Act 1965)

Section 340. Registration to confer indefeasible title or interest, except in certain circumstances.

(1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.

(2) The title or interest of any such person or body shall not be indefeasible:

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

(3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2):

(a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and

(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:

Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.

(4) Nothing in this section shall prejudice or prevent:

(a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or

(b) the determination of any title or interest by operation of law.

[8] Any charge for the time being registered shall subject to the provision of s. 340 be indefeasible. However based on s. 340(2)(b) read together with the proviso to sub-s. 3 of s. 340 of NLC affords protection to a subsequent purchaser. The position of the first defendant *vis-a-vis*, the plaintiff, in my view is that the first defendant is not a subsequent purchaser but a direct purchaser of the interest registered as a charge for the creation of the charge in favour of the first defendant, based on a discharge of charge purportedly executed by the plaintiff (which is denied) which then allowed a charge to be registered in the name of the first defendant. It follows therefore, that the first defendant is an immediate purchaser of the interest and is subject to immediate indefeasibility. This however is liable to be set aside in the event s. 340 sub-s. (2)(b) has been breached. In the evidence before this court, I find as a fact that the discharge of charge purportedly signed by the plaintiff had been forged. (see evidence in chief of by plaintiff's attorney, Lily Chee binti Abdullah in WSPW1). It follows therefore that s. 278 of the NLC has not been complied with and the charge of the first defendant would be subject to that of the plaintiff and defeasible.

[9] The plaintiff never intended to relinquish its interest by way of charge over the said land. It therefore follows the registration of the charge in favour of the first defendant should be set aside.

[10] The first defendant in its submission relies on the proviso to s. 340 sub-s. 3 and the position taken by the first defendant is that of a purchaser in good faith and for valuable consideration and therefore the concept of deferred indefeasibility would apply. Reliance is placed on the decision of the Federal Court in *Tan Ying Hong v. Tan Sian San & Ors* reported in [2010] 2 CLJ 269 and also the decision of the Court of Appeal in *Yap Ham Seow v. Fatimawati Ismail & Ors And Another Appeal* reported in [2013] 9 CLJ 577 and to the judgment of the president of the Court of Appeal Raus Sharif PCA and I quote at paras. 60, 61 and 66 and I quote:

> [60] We have deliberated on the relevance of the aforesaid authority and with respect we find that the case of *Shayo* is clearly distinguishable from the case at hand. In our considered view the issues in *Shayo* centered on the title which was issued *ultra vires* the NLC. The parties who had relied on this title and as a result transferred the same to the subsequent purchasers had in actual fact no title to give in the first place. As a consequence thereof, the learned trial judge in *Shayo* imputed liability on the eighth-12th defendants for the faulty registration of the plaintiff's title to the wrong entity which had caused the plaintiff to lose

A its proprietorship to the land. In the instant case, although a copy of the title was used to effect the transfer of the land as opposed to the original title, the hard facts of this case clearly reflects that the new title issued is indeed a title in continuation of the original title. Thus, we find that our present case is more akin to the case of *Adorna Properties*. The original title was indeed in the name of the plaintiff and the subsequent
B title in continuation was issued based on the fraudulent power of attorney executed by the forger. By reason of the crafty scheme enacted by the fraudsters claiming the original title was lost, the end result was that there were two titles to the same land.

[61] Thus, in our judgment guided by the pronouncement of the Federal
C Court in *Tan Ying Hong*, the fourth defendant being a subsequent purchaser obtains an indefeasible title if he can prove that he is a purchaser in good faith for valuable consideration. This is a statutory protection accorded to a subsequent purchaser and in the present case the fourth defendant stands to benefit from it if he (fourth defendant) can prove that he is a *bona fide* purchaser for valuable consideration. At
D the risk of stating the obvious, the burden of proving that there was valuable consideration and good faith in the conveyance of the land lies on the fourth defendant.

[66] Hence, it is our finding that the fourth defendant is a *bona fide* purchaser for valuable consideration whose title is indefeasible by virtue
E of s. 340(3) of the NLC. Since it is our finding that the fourth defendant's title is indefeasible, the learned trial judge's order to have the fourth defendant to be equally liable in respect of the plaintiff's costs, cannot be sustained. The fourth defendant cannot be penalised for the wrongdoings of which he is not privy to.

F **[11]** I accept fully these strong judicial pronouncements set out in both cases and, it is clear that the relationship between the plaintiff and the first defendant was that of an immediate purchaser and not a subsequent purchaser, thus the arguments of the first defendant in this regard will not apply in view of my finding of immediate indefeasibility. The first defendant argues that the immediate purchaser and the creation of the charge
G on the said land to the first defendant places the first defendant as a subsequent purchaser for value and in good faith. However for the charge to be created in favour of the first defendant, a discharge of the charge in favour of the plaintiff had to be executed pursuant to s. 278 of NLC and since the court has found that to be a forgery, the role of the first defendant
H as a subsequent purchaser for valuable consideration ie a chargee is that of an immediate purchaser and is subject to immediate indefeasibility and the question of a subsequent purchaser does not arise.

[12] I refer to the decision of the Federal Court in *Tan Ying Hong v. Tan Sian San & Ors* reported in [2010] 2 CLJ 269. In the facts of that case the
I "rogue" used a forged power of attorney to execute charges in favour of the

bank in that case. It was held by the Federal Court and I refer to the judgment of Ariffin Zakaria CJ (Malaya) in paras. (20) and (21) of the judgment and I quote:

> [20] Indefeasibility can be immediate or deferred. The distinction between the two is well explained in para 404 of *The National Land Code, A Commentary (Vol 2)* by Judith Sihombing which reads:
>
> > There are two types of indefeasibility; immediate and deferred. The factor which distinguishes the two is the common law effect given to the instrument even after registration; in addition; in a regime of deferred indefeasibility, the role of registered volunteer might be more relevant than under an immediate indefeasibility system. If, after registration has occurred, the system then ignores the substance, form and probity of the instrument used to support the registration, the system is likely that of immediate indefeasibility. Thus, registration has cured any defect in the instrument being registered. If the instrument, despite registration, still has the power to affect the registered interest or estate, the system will probably be that of deferred indefeasibility.
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> [21] In short, immediate indefeasibility means that the immediate registered title or interest of the proprietor or transferee immediately to the vitiating circumstances will be conferred statutory protection despite the existence of any vitiating circumstances. In the case of deferred indefeasibility, the indefeasibility only comes to be attached to the title or interest upon a subsequent transfer. Thus, the difference between immediate and deferred indefeasibility hinges on the effect of registration *vis a vis* the title or interest.

[13] I also refer to paras. 55 and 56 of the judgment, where Ariffin Zakaria CJ said and I quote:

> [55] Reverting to the facts of this case, it is not in dispute that the two charges registered in favour of the 3rd respondent were based on void instruments as the relevant Forms 16A were not executed by the appellant. They were executed by the 1st respondent pursuant to a forged PA. Thus, the charge instruments (Form 16A) used in the present case were indisputably void instruments. It follows, therefore, that the two charges in this case are liable to be set aside under s. 340(2)(b) since they are based on void instruments.
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> [56] The 3rd respondent is an immediate holder of these charges. That being the position, the 3rd respondent could not take advantage of the proviso to sub-s. (3) of s. 340.

[14] If I could by way of illustration elaborate, in this case, the registered owner (purchaser) created a charge over the said property by forging the signature of the attorney of the plaintiff and registering the same as a discharge of charge to enable the current charge over the said property in

favour of the first defendant to be registered. In view of my finding that the said discharge of charge and the signature on the same was forged, the purported transfer of interest from the plaintiff to the first defendant is one of immediate indefeasibility and the proviso in sub-s. 3 of 340 of the NLC do not apply, and s. 340(2)(b) of the NLC would kick in and the interest of the first defendant would not be indefeasible and would be liable to be set aside.

[15] The first defendant was the immediate holder of its charges and that being the case, the first defendant cannot take advantage of the proviso to sub-s. 3 of s. 340 of the NLC. On the upshot, I would allow the plaintiff's claim against the defendant with costs.

[16] In the light of my finding, I have to deal with first defendant's counterclaim against the second and third defendants. I refer first to the decision of the Court of Appeal in *Pendaftar Dan Pemeriksa Kereta Kereta Motor, Melaka & Ors v. KS South Motor Sdn Bhd* reported in [2000] 2 CLJ 573; [2002] 2 MLJ 54, and I refer to the judgment of the Court of Appeal at p. 547, of the report adopting by analogy the reasoning of the English case of *Ministry of Housing & Local Government v. Sharp &* [1970] 2 QB 223 and I quote:

> A somewhat similar fact situation arose in the case of the *Ministry of Housing and Local Government v. Sharp & Anor* [1970] 2 QB 223, where a careless clerk in a local land registry issued, on request, an official certificate to would-be purchasers of a piece of land that the land was free from any charge when in fact the Ministry of Housing and Local Government had already registered a charge two years earlier. The purchasers completed the sale based on the certificate. As the Ministry could not claim the benefit of the charge from the purchasers, they sued the registrar of the land registry and the local council on the ground that they were responsible for the mistake of the clerk.
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> When dealing with the registrar's obligations under the English Land Charges Act 1925, the Court of Appeal at p 265 of the report stated as follows:
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> > The fundamental obligation of the registrar is to keep the register, and in return he receives the prescribed fees. He must enter in the register every charge which is duly submitted to him. He must allow any person to search the register: and, if asked, he must make an official search and issue an official certificate setting forth the result.
> >
> > The object of the register is to provide security for two classes of people, incumbrancers and purchasers.
> >
> > By requiring a search, a purchaser is entitled to know exactly that charges incumber the land, and to adjust his price accordingly. If the registrar issues an official certificate, showing the land to be clear of any charge, that is conclusive in favour of the purchaser.

In finding the registrar liable, the court at p 266 of the report then adopted the following reasoning: A

> He must answer for the mistakes of the clerk and make compensation for the loss. He is a public officer and comes within the settled principle of English law that when an official duty is laid on a public officer, by statute or by common law, then he is B personally responsible for seeing that the duty is carried out. He may and often does, get a clerk or minor official, to do the duty for him, but, if so, he is answerable for the transgression of the subordinate ... Sometimes it is an absolute duty, in which case he must see that it is performed absolutely. At other times it is only a duty to use due diligence, in which case he must see that due C diligence is used. But, in any event, if the duty is broken, and injury done thereby to one of the public, then the public officer is answerable. The injured person can sue him in the civil courts for compensation ... By law he is responsible. He will, of course, if he is wise, insure himself against his liability: or get the Government to stand by him. But liable he is - to the person injured. D

Likewise on the facts of the instant appeal, although we acknowledge that the forged documents were done by person or persons unknown, the fact that not only such forged documents found their way into the registries of the first and second appellants, but that they replaced legitimate files originally maintained by them, indicate that there had E been gross mismanagement and negligence. We are also informed that this is not an isolated case but that there had been wide transgression and that this appeal is the forerunner of more cases to come before the courts. No reason was given how this could have happened and we can only conclude that the day-to-day operations at the registries of the first and second appellants have not been conducted properly or F professionally. For this dereliction of duty, we say that the first and second appellants must be made accountable. It is our opinion that the law should be that registers maintained by them must contain accurate particulars of all vehicles registered by them. This is essential for the good working of the register system as owners of motor vehicles or anybody else involved in the motor trade conduct searches on the G registers on payment of a fee and 'clearly a duty to take care must exist in such a case. See the case of *Ministry of Housing and Local Government v. Sharp & Anor*.

[17] By way of analogy a similar if not a higher degree of accountability should be imposed on the second and third defendants, as breaches of their H duty would not only affect the Rubric of Commercial Realty based transactions, where reliance is based solely on what is appearing in the register of titles as accurate, but may also lead to citizens having their rights under art. 13 of the Federal Constitution being dispossessed. Sections 297 to 302 of the NLC also support the proposition that the second and third I defendants do not exercise their functions perfunctorily ie with minimum

A care but the law imposes a duty on them to exercise due care to ensure the integrity of documents presented and issued from their registry (see *Poh Yang Hong v. Ng Lai Yin & Ors* [2013] 8 CLJ 964).

[18] The pivot of the argument of breach of duty on the part of the second and third defendants as contended by the first defendant is.

B

(i) The second and third defendants were not one of the authorised signatories of the land office.

(ii) Failing to detect IDT6 had not been issued by the land office.

C **[19]** In her testimony, Cik Noor Hafiza (DW6) had identified the name of five persons who were authorized to sign the IDTs and RDTs at the material time. Cik Noor Hafiza has further testified that the signature of IDT Version 6 is not one of the five authorised signatories. She said that had she not overlooked this, she would have rejected the presentation of the security documents. Her evidence is as follows: (see p. 99 of the notes

D of evidence)

Q: Bila Cik Hafiza meneliti IDT Versi 6 pada 25.11.2009, Cik Hafiza tidak sedar bahawa tandatangan di m/s 78 dan 79 bukan merupakan tandatangan pegawai yang berkuasa?

E A: Tidak sedar.

Q: Kalau Cik Hafiza sedar akan menolak surat hakmilik ini?

A: Ya.

[20] An even more startling revelation is the fact that all four persons at

F the land office checking the security documents in the present case had also overlooked the unauthorised signature on IDT Version 6. This is found in Cik Noor Hafiza's testimony (see p. 99 of notes of evidence) where she said:

Q: Dan mengikut Penyata Saksi Cik Hafiza, pemeriksaan ini

G melibatkan 4 kerani di kaunter, Cik Hafiza, Checker dan Pendaftar dan nampaknya dalam kes ini di semua peringkat, PTD Klang tidak dapat mengesan bahawa tandatangan di IDT Versi 6 bukan tandatangan orang yang mempunyai kuasa?

A: Ya.

H **[21]** Under cross-examination, Cik Farah (DW7) was forced to concede that under the then procedure adopted by the land office at the material time, a member of the public would have had no protection if a forged IDT was presented in the land office. The land office did not implement a system that would have allowed such detection. This is her evidence.

I Q: Ada tak pegawai yang memeriksa suratcara yang diserahkan untuk tujuan pendaftaran dapat akses kepada sistem untuk mengetahui nombor versi surat hak milik? Misalnya, pada 25.11.2009, bila KKL

mengemukakan surat hak milik yang bertarikh 25.8.2008, ada tak Puan atau pegawai-pegawai yang membuat semakan dapat akses kepada sistem untuk mengetahui adakah surat hak milik yang terbaru kerana seperti kita dengar beberapa surat hak milik. Ada tak pemeriksaan atau semakan seperti itu dijalankan dalam kes ini?

A: Tidak.

[22] Looking at the evidence elucidated clearly shows the lack of veracity of IDT6 issued by the second and third defendants.

[23] The second and third defendants rely on s. 22 of the NLC. I find the second and third defendants have been negligent in allowing IDT6 to be registered along with the security documents in favour of the first defendant which the court has ruled to be set aside, causing loss to the first defendant. I made the orders that I did against the second and third defendants. Before I conclude, let me once again quote the *dictum* of Eusoffe Abdoolcader J in the case of *Pow Hing & Anor v. Registrar of Titles, Malacca* reported in [1980] 1 LNS 120; [1981] 1 MLJ 156 at p. 160 and I quote:

> In tune with the prelude with which we commenced at the outset, we would by way of postlude in restating the message this decision delivers enjoin every official concerned with or involved in exercising powers and duties under the Code and related legislation to regard this judgment as a regrettably necessary but solemn caveat, giving warning, loud and clear, against any wanton disregard or sloppy application of express statutory provisions in the exercise of their functions, and one to be understood, marked and digested as such. We would add that they must strive to be au fait with the law they have to administer and should not hesitate in the course of their statutory duties to seek legal advice whenever necessary from the State Legal Adviser or his confreres and should never put the latter in the invidious and perhaps even intolerable position they found themselves in these proceedings of having both in the court below and before us to make feeble attempts at *ex post facto* justification for the inexcusable defaults of others on a post *hoc ergo propter hoc premise*, quite apart from unnecessarily constraining the justly aggrieved to pit themselves in curial combat against the massive and bottomless purse of the State - much to the delight, perhaps, of the legal profession.

[24] Despite reminders being issued in several cases, it is fast becoming apparent that the hallowed words of caution referred to above fall on deaf ears and the consequence of these acts continue to "bleed" State coffers because of damages to be met. It is hoped a serious attempt to address these problems would be undertaken soon by the appropriate authorities.